

APPENDIX G NORTH BEND GRAVEL OPERATION LAND USE TECHNICAL REPORT

- Comment 073-298*** Explain how jurisdiction discretion overrides the National Scenic Byway Program guidelines and the Federal Highway Administration criteria of policies and procedural authority for a federally funded program? [A response, please.]
- Comment 073-312*** Explain how the result of designation as a National Scenic Byway did or did not involve the proposed gravel mining operation.
- Comment 073-317*** [Eligible Projects] Construction along a scenic byway of a facility for pedestrians and bicyclists, rest area, turnout, highway shoulder improvement, passing lane, overlook, or interpretive facility.
- Explain how the proposed gravel pit is a highway related project.
- Comment 073-326*** [Eligible Projects] Development and implementation of a scenic byway marketing program.
- A marketing program may be consistent with the Memorandum of Understanding it is not consistent with TEA-21,1219.162
- Comment 073-327*** Limitation.--The Secretary shall not make a grant under this section for any project that would not protect the scenic, historical, recreational, cultural, natural, and archaeological integrity of a highway and adjacent areas.
- If the TEA-21 has been taken as just meaningless guidelines with no restrictions, the Federal Limitations are here verbatim. Let it be explained - NO MORE FUNDING. Other complications to be considered for non-compliance is to be de-designated as a National Scenic Byway.
- "De-Designation Process:
- a. The Secretary of Transportation may de-designate any roads or highways designated as National Scenic Byways or All-American Roads if they no longer [clear cutting, topographical alteration, gravel mining truck traffic] possess the intrinsic qualities nor meet the criteria which supported their designation.
 - b. A road or highway will be considered for de-designation when it is determined that the local and/or State commitments described in a corridor management plan have not been met [enable the project to proceed at an earlier date] sufficiently to retain an adequate level of intrinsic quality to merit designation.
 - c. When a byway has been designated for more than one intrinsic quality, the diminishment of any one of the qualities [scenic, natural, recreational] could result in de-designation of the byway as a National Scenic Byway or All-American Road.
 - d. It shall be the State's responsibility to assure that the intrinsic qualities of the National Scenic Byways and All-American Roads are being properly maintained in accordance with the corridor management plan.
 - e. When it is determined that the intrinsic qualities of a National Scenic Byway or All-American Road have not been maintained sufficiently to retain its designation, the State and/or Federal agency will be notified of such finding and allowed 90 days for corrective actions before the Secretary may begin formal de-designation."

A gravel mining, asphalt and concrete processing facility and mitigations involved with a gravel mining, asphalt and concrete manufacturing facility is not consistent with or corresponds to a highway project, planning and project designs in TEA-21, 1219. 162.

The TEA-21, nor the limitations of the TEA-21, recognizes, gives preference to or "priority to jurisdictional discretionary" projects that contravenes its intent and guidelines and it does not permit mitigation measures for projects that do not comply within its bounds. The TEA-21 does state any Eligible Project is to be consistent with the corridor management plan submitted for designation and adherence to the criteria in TEA-21. (470-Footnotes in hardcopy) It does require projects that will protect the scenic, historical, recreational, cultural, natural, and archaeological characteristics and integrity of Interstate 90 and the adjacent corridor.

The proposed gravel mining, asphalt and concrete operation, a project on the adjacent corridor of a National Scenic Byway, a project that is neither highway related, or consistent with the TEA-21 requirements for improvements, safety, protection and recreation uses on the National Scenic Byway is an Ineligible Project.

An Ineligible Project constitutes non-compliance, and therefore contravenes the purposes of the TEA-21. Non-compliance while maintaining the status of National Scenic Byway and acceptance of grant funding also constitutes a contradiction of intent and may constitute a step past ethics toward malfeasance.

(e) Savings Clause.--The Secretary shall not withhold any grant or impose any requirement on a State as a condition of providing a grant or technical assistance for any scenic byway unless the requirement is consistent with the authority provided in this chapter.

"... unless the requirement is consistent with the authority provided in this chapter..."

(f) Federal Share --The Federal share of the cost of carrying out a project under this section shall be 80 percent, except that, in the case of any scenic byway project along a public road that provides access to or within Federal or Indian land, a Federal land management agency may use funds authorized for use by the agency as the non-Federal share."

(b) Conforming Amendment --The analysis for chapter 1 of such title is amended by adding at the end the following: 162. National scenic byways program. END.

"...and two screening berms would be constructed to protect the aesthetic value of the Greenway corridor, However, short-term aesthetic impacts in the Greenway would occur during berm construction.

Protect -- To keep from harm, attack or injury, to guard, to defend. A novel and creative use of the word in relation to mitigation measures for deliberate and significant impacts.

The entire 100-mile CORRIDOR along "Interstate Highway 90 from Elk Hills westward across the Cascade Mountains to Puget Sound" is protected. The TEA-21 does not recognize only portions of the designated Scenic Byway and adjacent areas that are to be protected and developed for recreational purposes.

There is nothing in the TEA-21 Federal Regulations allowing for continued funding for scenic views of a gravel pit or pits adjacent to a National Scenic Byway, or anything associated, such as:

- Permanent degradation of scenic vistas from federal and state recreational areas
- Permanent destruction of a natural landscape, wildlife habitat and ecosystems, by clear cutting, filling in streams and creating two very large craters in the earth
- A facility that will be visible, consisting of a conveyor belt going up the side of hill, x-number of surge piles and buildings five stories tall
- Indeterminate amounts of light and glare, steam, smoke and dust emanating from this facility
- Indeterminate amounts of increased noise and increased PM10 and PM2.5 particulate matter in the air

The TEA-21 does not authorize mitigations of berm-building as an attempt to conceal an Ineligible Project so it cannot be seen from a National Scenic Byway. Berm-building is not going to squeeze or sneak a gravel mining, asphalt and concrete operation within the parameters of the TEA-21.

Please point out in the DEIS, the TEA-21, U. S. Code Title 23 Federal-Aid Highways, and the Department of Transportation, Federal Highway Administration, Docket No. 95.15, where and how the proposed gravel mining, asphalt and concrete manufacturing facility plans meet any of the criteria for a National Scenic Byway Program and plans comply with any procedural criteria for an approved project on a National Scenic Byway Corridor.

Comment 073-328

Washington State Scenic And Recreational Highway Act Of 1967

If the DEIS [authors of and/or contributors to Appendix G] has had difficulty with clarification of highway projects, planning and designing framework, further clarification can be found in the Washington State Scenic and Recreational Highway Act of 1967, which also recognizes the Transportation Equity Act for the 21st Century.

RCW 47.39.050 Planning and design standards--Facilities and factors considered
Planning and design standards established for highways falling within the scenic and recreational highways system may include, but shall not be limited to, provision for the following:

- (1) Hiking, bicycle, and bridle trails, including regulations for their use;
- (2) Campsites and shelters;
- (3) Boat launching sites;
- (4) Access trails to lakes, rivers and streams, and easements along their shores;
- (5) Safety rest areas;
- (6) Historic and geologic interpretative facilities;
- (7) Scenic observation facilities;
- (8) Roadside landscaping, restoration and aesthetic enhancement;
- (9) Specifically delineated highway corridors and means for the preservation of natural beauty, historic sites, or viewpoints;
- (10) A uniform system of signs and markers designating the various features and facilities of the scenic and recreational highway systems.

Interesting - there is no mention of inference to or provision for a gravel pit here either. Seems "jurisdictional discretionary" projects on a National Scenic Byway are in need of building yet another berm to comply with Washington State law.

Following are additional Washington State laws pertaining to highway projects as stated in the Washington State Scenic and Recreational Highway Act of 1967;

RCW 47.39.010 System created--Standards

There is hereby created a scenic and recreational highway system. Highways in this system shall be developed and maintained in accordance with general standards for state highways of comparable classification and usage. Recognizing that the Transportation Equity Act for the 21st Century establishes a national "scenic byway" program that could benefit state and local roadways, the Washington state scenic byway designation program is revised to address state and local transportation routes. Byways in this program must be designated and maintained in accordance with the criteria developed by the department under this chapter. However, a highway so designated under RCW 47.39.069 does not become part of the scenic and recreational highway system unless approved by the legislature.

RCW 47.39.075 Corridor management plan

RCW 47.39.090 Consultation with other agencies and parties--Identification of tourist routes

RCW 47.40.010 Improvement and beautification a highway purpose

Alternative Measure: Comply with the guidelines designated for Interstate 90, as a National Scenic Byway as identified in TEA-21, Section 1219. 162. This alternative measure would also be more consistent with the objectives of Mountains to Sound Greenway for the Interstate 90 corridor. A Plan that could be implemented for the Upper Snoqualmie Valley is mentioned in DEIS 3.9.1.3, Recreation, Planned Acquisitions and Improvements and DEIS Appendix I, 1.3.2, Middle Fork of the Snoqualmie River Valley: River Corridor Public Use Concept Plan.

Response

Consistent with the MOU between Weyerhaeuser, the Mountains to Sound Greenway Trust, King County Department of Natural Resources, the Trust for Public Lands, the applicant proposes to mitigate mining activities and protect scenic values in the I-90 corridor. The FHWA (through WSDOT) reviewed the DEIS, but did not comment on the scenic values of the I-90 corridor. WSDOT does not have jurisdiction over private property along I-90. The visual analysis prepared for this EIS concluded that no significant visual impacts from I-90 would occur. Refer to the Aesthetics section of this FEIS for detail.

Comment 024A-081

We would request that the DEIS include a complete analysis of the consistency of the proposed project with all applicable policies of the King County General Plan. We have not had the time to conduct this review ourselves. However, reviewing the analysis in the DEIS, it appears very short and focused on policies having to do with mining and forestry. For example, the direction given by the Growth Management Act says that "In classifying mineral resource lands, cities and counties must also consider the effects of proximity to population areas and the possibility of more intensive uses of the land as indicated by general land use patterns in the area, availability of utilities, etc. (Appendix G, page 10) Please assess the project's consistency with policies regarding resource protection, transportation, and character of life.

Response

The Relationship to Plans & Policies discussion prepared for the DEIS analyzes project consistency with the policies most relevant to the proposed project. FEIS Land Use provides further analysis of some additional policies.

Comment 024A-082 Appendix G notes that Policy RL-411 states that conditions and mitigations for significant adverse environmental impacts associated with mining operations should be required. The DEIS authors state that conditions and mitigations have been recommended in the DEIS to "minimize anticipated impacts." However, as noted in previous comments, we disagree with the EIS authors that these impacts have been mitigated to a less than significant level as appears to be required by this policy.

Response As indicated in the discussion on King County Comprehensive Plan policy RL-411 contained in DEIS Appendix G, measures to minimize anticipated impacts are identified for each element of the environment. The discussion on Policy RL-411 does not indicate that all significant unavoidable adverse impacts are eliminated by mitigation measures. The DEIS identifies Significant Unavoidable Adverse Impacts for the elements of Soils and Geology; Water and Environmental Health; Plants and Animals; Land Use; and Aesthetics.

Comment 024A-083 Our understanding of County regulations is that asphalt plants are allowed only on sites where mining is taking place. "Asphalt and concrete processing activities are permitted only if they are accessory to a primary mineral extraction use or are a continuation of an existing mineral processing use." (Appendix G, page 6) This is not the case for the proposed project since the asphalt plant will use aggregate from the Upper Site which is a distinctly different site. How can this asphalt plant be allowed given County zoning requirements?

Response Weyerhaeuser retained an easement between the upper and lower portions of the project site for purposes of the proposed gravel mine. The conveyor would be located within the easement. The asphalt and concrete plants would be accessory to mineral extraction use and allowed under King County Code.

Comment 024A-139 Appendix G "With the exception of the area to the immediate west of the Lower Site, the lands surrounding the sites are also designated "Forest Protection District." (Appendix G page 14) This does not appear to be the case as the lands to the north are RA-5 and RA-10 and the Lower Site is bordered on the south by 1-90 and then RA-5.

Response The noted discrepancy is not identified in DEIS Appendix G. As indicated on page 14 of Appendix G, "the King County Comprehensive Plan identifies the sites and area to the immediate east as Forestry and within the Forest Protection District, which classifies mineral resource mining as a permitted use. The areas to the immediate north and west of the Lower Site are designated Rural Residential. "

Comment 045-058 Page 3.7-13, bottom para.: The fact that the Proposed Site is consistent with current Mineral Extraction Zoning does not automatically guarantee that a grading and operating permit should be granted if the Applicant's proposal does not meet permit standards.

Response The comment related to the need for the proposed project to adhere to permit standards is acknowledged. Refer to FEIS Appendix H for a discussion on the relationship of the proposed project to relevant plans and policies.

Comment 073-293

Transportation Equity Act for the 21st Century (TEA-21)

Section. 1219 National Scenic Byways(a) In general - Chapter 1 of Title 23, United States Code is amended by adding at the end the following:

Section 162. National Scenic Byways

- (a) Designation of Roads.
 - (1) In general...
 - (2) Criteria...
 - (3) Nomination...
- (b) Grants and Technical Assistance...
 - (1) In general..
 - (A) Implement projects...
 - (B) Plan, design develop..
 - (C) Priorities
 - A) Each eligible project...
 - (B) Each eligible project...
 - (C) Each eligible project...
 - (c) Eligible Projects...
 - (1) An activity related..
 - (2) Development and implementation...
 - (3) Safety improvements..
 - (3) Construction..
 - (5) An improvement..
 - (6) Protection...
 - (7) Development and provision...
 - (8) Development and implementation..
 - (d) Limitation..
 - (e) Savings Clause..
 - (f) Federal Share..
- (b) Conforming Amendment -- The analysis for Chapter 1 of such title is amended by adding at the end the following: 162. National Scenic Byways Program

Interstate 90 as a National Scenic Byway and the adjacent corridor areas are designated for protection and recreation enhancement under provision of Federal Regulation TEA-21 - Transportation Equity Act for the 21st Century, Subtitle B--General Provisions

Comment 073-294

Sec. 1219. National Scenic Byways Program(a) In General --Chapter 1 of title 23, United States Code, is amended by adding at the end the following:

Sec. 162. National Scenic Byways Program

(a) Designation of Roads(1) In general -- The Secretary [Secretary of Transportation] shall carry out a national scenic byways program that recognizes roads having outstanding scenic, historic, cultural, natural, recreational, and archaeological qualities by designating the roads as National Scenic Byways or All-American Roads.

Is a gravel pit on a National Scenic Byway consistent with, would its existence contradict, the criteria developed by the Secretary in TEA-21?

Comment 073-295

(2) Criteria -- The Secretary shall designate roads to be recognized under the national scenic byways program in accordance with criteria developed by the Secretary.

"Jurisdictions along designated roads are given priority for discretionary highway projects, planning and design grants."

There seems to be some confusion with subject, verb usage in this statement. Subject confusion =jurisdiction is actually the Secretary of Transportation. Verb confusion = given is actually to give. The correct sentence structure can be read two ways; jurisdictions will give priority to or the Secretary of Transportation gives priority to, the latter is the most correct subject, verb usage. Either way, jurisdictions do not have priority and the Secretary of Transportation does.

This statement in DEIS Land Use, 3.9.1, National Scenic Byway Program is a direct contradiction in accordance with criteria developed by the Secretary, in the TEA-21. The Secretary of Transportation gives priority to Eligible Projects, TEA -21, 1219, 162(0)(2).

"The Federal Highway Administration (FHWA) administers the following discretionary programs [scenic byways]... These discretionary programs represent special funding categories where FHWA solicits for candidates and selects projects for funding based on applications received. Each program has its own eligibility and selection criteria that are established by law, regulation or administratively."

"Application. - A State, a local servicer identified under section 185(a), or the entity undertaking the project shall submit a project application to the Secretary."

Comment 073-297

Designation (444-Footnotes in hardcopy) of Interstate 90 National Scenic Byway was based on nomination, then a review process of the Corridor Management Plan submitted to the Federal Highway Administration. Approval of National Scenic Byway designation was based on this Corridor Management Plan, by the Federal Highway Administration, Secretary of Transportation. Policies, procedures and criteria requirements for maintaining designation are outlined in the TEA-21, U. S. Code Title 23 Federal-Aid Highways, and the Department of Transportation, Federal Highway Administration, Docket .

Response

The comments related to the National Scenic Byways Program are acknowledged. Please refer to the Plans and Policies section of the Land Use Technical Report for a brief discussion on the National Scenic Byways Program.
